IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3538 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ML RANA - Petitioner(s)
Versus
ONGC & ORS & 1 - Respondent(s)

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Appearance :
MR BS PATEL for Petitioner(s) : 1,
MR RAJNI H MEHTA for Respondent(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

Date : 26/06/2006
ORAL JUDGMENT

In this petition under Article 226 of the Constitution, the petitioner, an employee of the Oil & Natural Gas Commission, has challenged the order dated 14.7.1993 (Annexure-A) imposing the penalty of compulsory retirement after holding a departmental

inquiry and also the subsequent order dated 8.7.1994 (Annexure-B) dismissing the petitioner's appeal against the said order of penalty.

2. The petitioner was served with a charge-sheet dated 12.2.1992 instituting departmental inquiry against the petitioner in respect of the following charges :-

1. That CO did not obtain prior permission of the Competent Authority before he took part in the registration, permission and management of M/s. Jai Bharat Travel Cooperative Society Ltd., Ankleshwar whose aim is commercial.
2. CO furnished incorrect information that he purchased a car for Rs.45,001/- when he actually paid only Rs.29,730/-. Further that he mis-utilised Commission's money to the extent of Rs.15,070/-.

The petitioner submitted his reply contesting the charges. The ONGC appointed an Inquiry Officer and oral and documentary evidence was led on behalf of the Department. The petitioner also led his evidence and also filed his defence brief (Annexure-H). The Inquiry Officer submitted his report dated 9.10.1992 holding that both the charges levelled against the petitioner were proved. The ONGC thereafter served the petitioner with notice dated 25.2.1993 along with a copy of the Inquiry Officer's

report. The petitioner submitted his reply dated 3.5.1993 to the same. Ultimately, the Disciplinary Authority passed the impugned order dated 14.7.1993 accepting the report of the Inquiry Officer and holding the petitioner to be guilty of both the charges levelled against him and imposing the penalty of compulsory retirement. Aggrieved by the same, the petitioner preferred his appeal (Annexure-M) which came to be rejected by the communication dated 8.7.1994 (Annexure-B). Hence this petition under Article 226 of the Constitution.

3. At the hearing of this petition, Mr BS Patel with Ms Kiran Pandey, learned advocates for the petitioner made the following submissions :-

(i) Participating in the formation of a cooperative society cannot be treated as an act of misconduct. In any case, the Society was formed for the welfare of the persons belonging to scheduled castes, scheduled tribes and other backward classes. The petitioner himself belongs to a community falling in the category of other backward classes.

(ii) Departmental Witness No.1 Dr RI Parmar was admittedly the Chief Promoter and, out of 11 promoters of the Society, 7 promoters were employees of the ONGC. Other than the petitioner, no other person was subjected to

such disciplinary proceedings. Hence, the institution of the departmental inquiry and the impugned penalty order are arbitrary and discriminatory.

(iii) It was the case of Departmental Witness No.1 Dr RI Parmar himself that the higher officer had given an oral “go ahead” for formation of the Society in question for the purpose of providing taxi services to the ONGC and that such oral request was made on behalf of the seven employees of ONGC who had become promoters of the cooperative society.

(iv) Vide application Exh.D8, the petitioner had sought permission of the competent authority for the purpose of joining the cooperative society. Shri RR Mehta, DD(P&A) had admitted that “the same has been returned in original (RIO) with certain remarks to DD(S&P)(OBG), Ankleshwar” during October 1987, Ex.D.2(1). That application for permission to join Jaibharat Travel Cooperative was received in main Establishment Section and was returned to Deputy Director (S&P), OBG, Controlling Officer of CO. The Department had not led any evidence to establish that at any stage individual or person had returned the application to the petitioner or rejected the same.

(v) In the statement of imputations, the ONGC had contended that Mukesh Rana of Jaibharat Society had signed the contract on behalf of the Society. In any case, the petitioner was not office bearer of the Society.

(vi) As regards the second charge, it is submitted by the learned advocates for the petitioner that the seller of the car had received the amount of Rs.45,001/- and passed receipt for the same and such a person cannot be allowed to state that he had received less amount. In a large number of cases, the vendor would like to avoid income tax liability and not to show receipt of any higher amount than the book value of the vehicle for which he has already claimed depreciation and, therefore, in his accounts he may show a lesser amount equivalent to the book value of the vehicle. That cannot be used against the purchaser of the vehicle who has got the receipt for the amount paid by him to the seller of the vehicle.

(vii) It is further submitted that the charge-sheet issued in the year 1992 is for the alleged incident of 1978.

(viii) The findings arrived at by the Inquiry

Officer and accepted by the Disciplinary Authority are such which no reasonable person would arrive at.

(ix) Finally it is urged that in any view of the matter, the penalty of compulsory retirement after the petitioner having rendered services of 27 years, is unduly harsh and disproportionate to the alleged misconduct which has not caused any loss to the ONGC. The amount of loan taken by the petitioner from the ONGC for purchase of second hand vehicle for Rs.45,000/- has already been repaid and no loss occurred to the ONGC on account of the petitioner having acted as one of the promoters of the cooperative society, out of which seven were employees of the ONGC.

4. On the other hand, Mr RH Mehta, learned counsel for the ONGC has opposed the petition and submitted as under:-

(i) The petitioner himself had stated at the inquiry that he had not applied for any permission for participating in the formation of the cooperative society and, therefore, the question of the authority considering any application for such permission did not arise.

(ii) Admittedly, the petitioner was one of the promoters of a cooperative society which was engaged in the business of giving taxis on hire to the ONGC which was a commercial activity and, therefore, the petitioner having become a member of such cooperative society engaged in commercial activity without permission of the ONGC was a serious misconduct.

(iii) The seller of the vehicle had produced his accounts in support of the contention that he had received only Rs.29,730/-. His case was that he had signed a blank receipt and given to the petitioner and, therefore, the second allegation was also proved.

(iv) It is vehemently submitted by Mr Mehta that the findings given by the Inquiry Officer, as accepted by the Disciplinary Authority as well as the Appellate Authority are findings on questions of fact and that this Court would not sit in appeal over the decision of the Disciplinary Authority or the Appellate Authority. This Court would not re-appreciate the evidence.

Strong reliance is placed on the decisions of the Apex Court in **Bank of India vs. Degala Suryanarayana, (1999) 5 SCC 762** and **Union of India vs. P Chandra Mouli & Ors.,**

(2003) 10 SCC 196 in support of the aforesaid submission.

5. As far as the first charge is concerned, in view of the documentary evidence, there is no dispute about the fact that M/s. Jaibharat Travel Cooperative Society Ltd., Ankleshwar was registered with the District Registrar of Cooperative Societies on 17.10.1987 (Exh.S1) and that the registration continued as per the intimation received by the ONGC on 24.5.1989. The Society was formed with 11 promoters, including Dr RI Parmar Departmental Witness No.1 and petitioner Madhusudhan L Rana. There is also documentary evidence indicating that M/s. Jaibharat Travel Cooperative Society Ltd., Ankleshwar (hereinafter referred to as the Society) had made offers for providing cars/taxis on hire. The vehicles of course belonged to other persons and not to the Society or to the promoters, but when the offers of the Society were accepted, agreements were entered into between the DGM(D), ONGC, Ankleshwar and the Society for hiring of cars/taxis for the relevant period such as in the year 1989.

6. It appears that there were two controversies – whether the Society was engaged in commercial activity as contended by the ONGC or was doing any charitable activity as contended by the petitioner, and the second controversy was whether the petitioner had made any written application for permission to join the aforesaid Society.

7. As far as the first controversy is concerned, the petitioner had sought to contend that the persons belonging to scheduled castes, scheduled tribes and other backward classes owning their cars/jeeps were giving such vehicles on hire to ONGC and other hirers, on their own they could not have done such business and that the Cooperative Society was helping the members of SC, ST community and other backward classes. It appears that the petitioner had also contended that the Society was doing charitable activity, but no proof was adduced in support of the said contention. On the contrary, it was admitted that apart from the owners of other vehicles, two cars were purchased in the name of the petitioner's relative (sister in law) and given on hire to ONGC. It is, therefore, not possible to accept the petitioner's case that the cooperative society in question was not doing any commercial activity, but was carrying on any charitable activity.

8. However, it does appear that there were seven employees who were promoters of the cooperative society. While Dr RI Parmar was the Chief Promoter and he also claimed to have made written application for permission, after obtaining the oral permission from the higher officer, there is dispute about the fact whether the petitioner had made any such application. The petitioner had produced documents at Exh.D-2(1), (2), (3) to show that the petitioner had

made application dated 17.10.1987 requesting for permission to participate as honorary active member of the Society. D8 was a copy submitted by the petitioner in the inquiry of his application dated 17.10.1987 to the DGM seeking permission to join the Society. It appears that even Shri RR Mehta DD(P&A) whose statement was before the Inquiry Officer had stated that the petitioner's application was returned in original with certain remarks to DD(S&P)(OBG), Ankleshwar during October 1987, Exh.D.2(1) and the application was returned by Dy. Director (S&P)(OBG), controlling officer of the petitioner. In view of the above statement of Shri RR Mehta, the question is whether the Inquiry Officer was justified in giving the following finding against the petitioner:-

> “But during investigation CO himself had stated that he did not apply for any written permission (Ex.S-33). The Investigating Officer also deposed (PW-3) that he did not find any application seeking permission in the personal file of CO whereas he found such an application for permission from PW-1 Dr RI Parmar. He also deposed after seeing Ex.D-2(1), D-2(2) and D-2(3) that it could not be that CO's application for permission was returned with permission since there was no such processing in the personal file of CO. ... there is no such record of CO taking oral permission and following it up with written request. Therefore, the only conclusion from this is that CO did not take

oral permission or written permission to become the member of the Society....”

Mr Patel for the petitioner has submitted that if the petitioner's statement before the Inquiry Officer contained any statement that he had not made any such application, there appears to be an obvious mistake in recording the petitioner's statement because the petitioner had pointed out in para 1.7 of the defence brief (Annexure-H) that the petitioner had sought permission of competent authority vide Ex.D8 specifically mentioning therein the purpose and name of the Society.

In view of the above defence of the petitioner in the defence brief, it is surprising as to why the Inquiry Officer has not discussed that aspect. It, therefore, appears to the Court that as far as charge No.1 is concerned, the matter is required to be remanded to the authority for reconsidering the matter, inter-alia, in light of the statement of Shri RR Mehta.

9. Coming to charge No.2, while the petitioner had relied on the receipt issued by seller of the vehicle Shri Pravinchandra B Kapadia of Bardoli for an amount of Rs.45,001/-, the Department relied upon the entries made in the books of account of the seller at Rs.29,730/- and the seller's statement. The stand of the petitioner is that in order to avoid income-tax liability the seller may have shown lesser

amount in his books of account. That cannot nullify the receipt issued by the seller. It appears that the Inquiry Officer preferred the word of the seller on the one hand as against the word of the petitioner supported by the receipt on the other hand on the following grounds:-

(i) The Inquiry Officer did not find that the seller was inimically disposed towards the petitioner; there is no reason why the seller should state that he had received only Rs.29,730/- for sale of car, if he had actually received Rs.45,001/-.

(ii) The Inquiry Officer stated that he had observed the seller when he was deposing and the witness did not give the Inquiry Officer the impression that the witness was suppressing the truth.

(iii) Any prudent officer would have made payment of the amount of sale price of the car to the seller by cheque.

As far as the first ground for accepting the seller's version is concerned, the Inquiry Officer has not at all dealt with the petitioner's case that showing the sale price as Rs.45,001/- would have exposed the seller to income-tax liability. Even a perusal of the relevant extracts from the books of account of the seller for the relevant year i.e.

1987-88 indicates that the seller had shown the book value of the car at Rs.29,730/- as the depreciated value of the car and that is exactly the amount for which the seller claims to have sold the car to the petitioner. In this set of circumstances even if the Inquiry Officer did not want to discard the seller's version, the petitioner was entitled to be given the benefit of doubt as far as charge No.2 is concerned.

10. As per the settled legal position, while the degree of proof in a departmental inquiry need not be as high as degree of proof required in a criminal trial viz. proof beyond reasonable doubt, at least the employer must prove the charge against the delinquent on a preponderance of probabilities. In the facts and circumstances of the case and the material on record, it cannot be said that the Department had proved charge No.2 against the petitioner on preponderance of probabilities and the petitioner was entitled to get the benefit of doubt in respect of charge No.2.

11. In view of the above discussion, while the matter is required to be remanded for reconsidering the matter in respect of charge No.1, it is not necessary to express any opinion on the question of penalty because ultimately if the Disciplinary Authority comes to the conclusion that charge No.1 is not proved, the question of penalty would not survive. Even if ultimately the respondents again come to the conclusion that charge No.1 is proved

against the petitioner, now that this Court has held that charge No.2 cannot be said to have been proved against the petitioner, the respondents will have to consider the question of penalty only for charge No.1 and from the point of proportionality, more particularly because it is the petitioner's case that out of 11 promoters of the Society as many as seven were employees of the ONGC and that it was only PW1 Dr RI Parmar who had subsequently resigned from the cooperative society after having been its chief promoter and chairman for some time.

12. At this stage, the Court would also refer to the submission made by Mr BS Patel for the petitioner that as far back as on 28.11.1991 the petitioner had made an application for voluntary retirement and that the said application was made before the charge-sheet was issued on 12.2.1992. It is submitted that the petitioner had fulfilled all the conditions for voluntary retirement and the petitioner had in fact filed Special Civil Application No.2054 of 1993 wherein prayer (b) was to direct the respondent-authorities to release the voluntary retirement of the petitioner, meaning thereby, to accept the petitioner's request for voluntary retirement. However, that petition was treated as infructuous when the matter reached final hearing on 12.7.1994 because in the meantime the order of penalty impugned in the present petition had already been passed.

13. On the other hand, Mr Mehta for the

respondents submits that the decision to initiate departmental inquiry was already taken earlier and the petitioner made grievance about non-acceptance of the application for voluntary retirement only in 1993.

14. It appears that in any case the petitioner's prayer (b) did not receive any judicial consideration in SCA No.2054 of 1993 and, therefore, it will be open to the petitioner to raise that contention before the respondent- authorities when the matter will be re-examined by the respondent-authorities pursuant to this order of remand.

15. In view of the above discussion, the impugned orders dated 14.7.1993 (Annexure-A) and 8.7.1994 (Annexure-B) are quashed and set aside and the matter is remanded back to the respondents for reconsidering whether charge No.1 regarding the petitioner having become a member of the cooperative society for a commercial activity without permission of the competent authority, can be said to have been proved and thereafter to consider the question of penalty, if at all that question arises. The aforesaid exercise shall be undertaken and completed within four months from the date of receipt of the writ of this judgment or a certified copy of this judgment, whichever is earlier.

16. The petition is accordingly partly allowed. Rule is made absolute to the aforesaid extent only.

(M.S. SHAH, J.)

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